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SUBJECT: INSTRUCTION TO CO-SPONSOR RESOLUTION ON ARBITRARY DETENTION IN THE UNITED NATIONS HUMAN RIGHTS COUNCIL 10TH REGULAR SESSION

¶1. (U) Action Request: Mission Geneva is authorized to co-sponsor the resolution on Arbitrary Detention in the United Nations Human Rights Council's 10th Regular Session. Mission should seek guidance from the Department if the substance of the resolution changes.

¶2. (U) Begin Text:

The Human Rights Council,

Reaffirming articles 3, 9, 10 and 29, as well as other relevant provisions, of the Universal Declaration of Human Rights,

Recalling articles 9, 10, 11, and 14 to 22 of the International Covenant on Civil and Political Rights,

Recalling resolutions 1991/42 and 1997/50 of the Commission on Human Rights, and its resolution 6/4 of 28 September 2007 extending the mandate of the Working Group on Arbitrary Detention for a further period of three years,

¶1. Stresses the importance of the work of the Working Group on Arbitrary Detention and encourages it to pursue the fulfilment of its mandate, as set out in resolution 6/4;

¶2. Takes note of the report of the Working Group (A/HRC/10/21), including the recommendations contained therein;

¶3. Requests the States concerned to take account of the Working Group's views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken;

¶4. Encourages all States:

(a) To give due consideration of the recommendations of the Working Group;

(b) To take appropriate measures in order to ensure that their legislation, regulations and practices remain in conformity with the relevant international standards and the applicable international legal instruments;

(c) To respect and promote the right of anyone who is arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to be entitled to trial within a reasonable time or to release;

(d) To respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their international obligations;

(e) To ensure that the right referred to in subparagraph (d) above is equally respected in cases of administrative detention, including administrative detentions in relation to public security legislation;

(f) To ensure that the conditions of pre-trial detention do not undermine the fairness of the trial;

¶ 15. Encourages all States concerned to ensure that any measures taken to combat terrorism comply with their obligations that ensure protection against arbitrary detention, bearing in mind relevant recommendations of the Working Group;

¶ 16. Encourages also all States to ensure that immigrants in an irregular situation and asylum seekers are protected from arbitrary arrest and detention and to take action to prevent any form of arbitrary deprivation of liberty of immigrants and asylum-seekers, and notes with appreciation that some States have successfully implemented alternative measures to detention for undocumented migrants;

¶ 17. Notes with concern the comments made by the Working Group in its report A/HRC/10/21 on the effects caused by corruption on the effective protection of human rights, including the right not to be subject to arbitrary detention;

¶ 18. Encourages all States to cooperate with the Working Group, and to give serious consideration to responding favourably to its requests for visits, so that it may carry out its mandate even more effectively;

¶ 19. Notes with concern that a persistent proportion of urgent appeals of the Working Group has been left unanswered and urges the States concerned to give the necessary attention to the urgent appeals addressed to them by the Working Group on a strictly humanitarian basis and without prejudging its possible final conclusions;

¶ 10. Expresses its profound thanks to the States that have extended their cooperation to the Working Group and responded to its requests for information, and invites all States concerned to demonstrate the same spirit of cooperation;

¶ 11. Takes note with satisfaction of the fact that the Working Group has been informed of the release of some of the individuals whose situation has been brought to its attention, while deplored the many cases that have not yet been resolved;

¶ 12. Requests the Secretary-General to ensure that the Working Group receives all necessary assistance, particularly with regard to the staffing and resources needed for the effective fulfilment of its mandate, especially in respect of field missions;

¶ 13. Decides to continue consideration of the matter in conformity with its programme of work.

CLINTON